84-1218

Office Supreme Court, U.S.
FILED
JAN 25 1985
ALEXANDER L. STEVAS,
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

STATE OF INDIANA,

Petitioner,

v.

WILLIAM A. MINNICK,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

LINLEY E. PEARSON
Attorney General of Indiana

WILLIAM E. DAILY
Deputy Attorney General

JOSEPH N. STEVENSON
Deputy Attorney General

Office of Attorney General
219 State House
Indianapolis, Indiana 46204
Telephone: (317) 232-6217

Attorneys for Petitioner

Central Publishing Company, Inc., Indianapolis, IN 46206

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

STATE OF INDIANA,

Petitioner,

v.

WILLIAM A. MINNICK,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

QUESTION PRESENTED

Whether the Court's holding in *Edwards v. Arizona* concerning initiating custodial interrogation after a suspect has mentioned his desire for representation of counsel must be applied as a *per se* rule or whether a court may consider from the facts whether the defendant voluntarily, knowingly, and intelligently waived his right to have counsel present; and, if so, whether the defendant did so in this instance.

TABLE OF CONTENTS

	Page:
Question Presented	i
Table of Authorities	iii
Opinion Below	1
Statement of Jurisdiction	2
Constitutional Provisions	2
Statement of the Case	3
Summary of Reasons For Allowance of the Writ	9
Reasons For Allowance of the Writ	9
Conclusion	17
Appendix A	A-1
Appendix B	B-1

TABLE OF AUTHORITIES

Cases: *Pages:*

Edwards v. Arizona, 451 U.S. 447, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981) 3,9-16

Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed.2d 1461 (1938) 12

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.E.2d 9694 (1966) 9

Oregon v. Bradshaw, ___ U.S. ___, 103 S.Ct. 2830, ___ L.Ed.2d 2830 (1983) 13

Smith v. Illinois, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___ (No. 84-5332, Dec. 10, 1984) 10-11

United States v. Leon, ___ U.S. ___, 104 S.Ct. 3405, ___ L.Ed.2d ___ (1984) 14-15,16

Wyrick v. Fields, ___ U.S. ___, 103 S.Ct. 394, ___ L.Ed.2d ___ (1982) 12-13,15,17

Rule:

Rules of the Supreme Court, Rule 20.1 2

Other:

28 U.S.C. §1257(3) 2

United States Constitution, Amendment Article V ... 2,9

United States Constitution, Amendment Article VI .. 2,9

United States Constitution, Amendment Article XIV . 3,9

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

STATE OF INDIANA,

Petitioner,

v.

WILLIAM A. MINNICK,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Petitioner, State of Indiana, respectfully requests the Court to issue a Writ of Certiorari directed to the Supreme Court of Indiana and, thereby, review the decision entered by that Court in cause number 1282 S 467 on September 7, 1984.

OPINION BELOW

The opinion of the Indiana Supreme Court was rendered on September 7, 1984, and is officially reported at 467 N.E.2d 754. The opinion is set forth in Petitioner's Appendix A. Petitioner filed a timely petition for rehearing on September 27, 1984, which petition was denied on November 30, 1984. A copy of the denial of the petition for rehearing is contained in Petitioner's Appendix B.

STATEMENT OF JURISDICTION

The State of Indiana petitions for a Writ of Certiorari from a decision, in a criminal case, of the highest court in the State of Indiana. The state court opinion was rendered on September 7, 1984, and a timely petition for rehearing was denied on November 30, 1984. The Court has jurisdiction to review the judgment of the Indiana Supreme Court by writ of certiorari under the provisions of 28 U.S.C. § 1257(3). The petition is timely filed under the provisions of Rule 20.1 of the Rules of the Supreme Court.

CONSTITUTIONAL PROVISIONS

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall private property be taken for public use, without just compensation.

United States Constitution, Argument V.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Constitution, Amendment VI.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty, or property,

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, Amendment XIV, § 1.

STATEMENT OF THE CASE

On the afternoon of October 26, 1981 Martha Payne, a young Greencastle, Indiana housewife, was raped and killed. The cause of her death was a gaping stab wound, but she had also been strangled to unconsciousness, hit on the back of the head with a blunt object, and had a live electrical wire applied to her ankle sufficient to burn the skin. A jar full of coins of a value of about eighty dollars was missing.

Respondent William Minnick, Defendant in the criminal case, was convicted of Murder, Robbery, and Rape. The jury recommended the death penalty and the trial court concurred.

The trial court admitted over objection a statement obtained from him the afternoon after the killing. The Supreme Court of Indiana reversed the conviction on the sole grounds that the statement was obtained in violation of this Court's holding in *Edwards v. Arizona*.

A Greencastle police officer, early in the morning of October 27, 1981, obtained Minnick's agreement to go to the police station to talk. Minnick was advised of his rights and signed an advisement form. He declined to obtain an attorney. During the interrogation Minnick stated that he had talked to Mrs. Payne at her house that afternoon, and had been in her house and handled an electrical cord.

By the time the interrogation was over, (at about 7:30 a.m., rather than 11:00 a.m. as the State Supreme Court said in its opinion, though the difference in time is unimportant) the following persons besides Minnick were involved: Minnick's stepfather and his mother (Mr. and Mrs. Rogers), State Policeman Hanlon, Greencastle Police

Officer Cline, and Putnam Co. Prosecutor Brewer. The interrogation ended, and the officials began to advise Minnick as to what would happen next. It was during this discussion that assistance of counsel was discussed. As quoted by the Indiana Supreme Court, the conversation was as follows (467 N.E.2d at 755-756):

> MR. HANLON: We're going to get a, a warrant (inaudible).
>
> MR. MINNICK: A warrant for what?
>
> MR. HANLON: Take some hair from, samples of hair, pieces of hair. Girl was, had a lot of hair under her fingernails.
>
> * * *
>
> MR. HANLON: So we're going to get a warrant, to take some samples of your hair, okay?
>
> MR. MINNICK: Take some, some of mine?
>
> MR. HANLON: Yeah.
>
> MR. MINNICK: Why?
>
> MR. HANLON: Because she had samples of hair on her. And we want to match them. See if we can match them with what's on her.
>
> MR. MINNICK: What's that for?
>
> MR. HANLON: To see if you were, had a hold of her or she had hold of you.
>
> MR. MINNICK: Then I killed her?
>
> MR. HANLON: I don't know that.
>
> SLIGHT INTERRUPTION IN TAPE
>
> MR. CLINE: — just a routine and everything.
>
> MR. ROGERS: Is he under arrest?
>
> MR. MINNICK: Am I under arrest?

MR. HANLON: We're going to hold you for a little while.

MR. MINNICK: Well, I (sic) rather go home.

MRS. ROGERS: Does he need a lawyer?

MR. HANLON: That's up to you.

MR. MINNICK: I'd rather go home. If you're going to fingerprint me, fingerprint me. I'd rather go home.

MR. BREWER: You're not leaving. Not yet. Also on, on this, what he's talking about on the warrant, you'll be detained because there may have been rape. We're going to take specimens of various parts, as soon as we have the Judge sign it. Which if the girl was raped and it matches with you, the semen, etcetera (sic), it will also tell us that.

MR. MINNICK: Huh uh. No. — And then can I, am I allowed to go home?

MR. HANLON: Not right now. (inaudible)

MR. MINNICK: Am I under arrest though? Am I under arrest?

MR. BREWER: You're being held for investigation right now.

MR. MINNICK: Am I, am I allowed to go home though?

MR. HANLON: No, no.

MR. MINNICK: Can I get my lawyer then?

MR. CLINE: You're under custodial arrest at this time.

MR. HANLON SPEAKING SIMULTANEOUSLY WITH MR. CLINE.

MR. HANLON: You have a right to (inaudible)

MR. MINNICK: I'm gonna go home then.

MR. HANLON: Wait a minute. (inaudible)

MR. BREWER: We doing the same thing on some other suspects?

MR. CLINE: That's what I'm saying, you have others too.

MR. HANLON: Yeah.

MR. BREWER: But that will tell us scientifically, you know.

* * *

MR. ROGERS: Well Jack, do we have to have an attorney or what do you think?

MR. HANLON: Well, that's entirely up to you.

MR. MINNICK: I'd rather have attorney.

MR. BREWER: Huh?

MR. MINNICK: I'd rather have attorney.

MR. BREWER: That won't stop the search warrant.

MR. HANLON: That, that won't stop it.

MR. ROGERS: Well no, but —

MRS. ROGERS: Would it be better then, to just wait what you'ns find and then get an attorney?

MR. BREWER: I can't advise you of that? You have the right to.

MR. HANLON: That's up to you.

Minnick was held, the search warrant was obtained, and the body samples were taken. Later in the morning, at 11:00 a.m., defendant was given his last body sample test, which was for the presence of metal traces. The State Police officer who took that test first gave Minnick a rights advisement and obtained a signed waiver from Minnick, which Minnick was told was for the purpose of his submitting to the test. This form included the right to presence of an attorney, and Minnick waived that right, among others, at least for purposes of the physical test.

(There was no result of this test, and therefore no issue as to whether it was properly taken arises.)

After 11:00 a.m. a State Police officer formally arrested Minnick and took him to the Putnam County Jail.

Two other officers involved in the investigation, who had not been present at the morning interrogation session which ended with the discussion of the attorney's services, arrived at the jail shortly before three p.m. One of them, Sheriff's Officer Hendricks, went upstairs to the jail. He asked Minnick if he wanted to go downstairs and talk to the officers and answer a few questions. Minnick did not respond, and Hendricks repeated the question. Minnick answered "Yes." Hendricks was not aware of any request Minnick might have made to get a lawyer. The officers advised Minnick of all his rights, and asked him if he had a lawyer or wanted one. Minnick said he understood all his rights, and did not want a lawyer.

After some questioning Minnick asked to have the tape turned off. As soon as the tape was turned off, Minnick asked "Do you want me to talk about a murder?" Minnick told his version of the afternoon in basically a narrative form. In it, he described the rape and several attempts to murder Mrs. Payne, but said these acts were done by a man whose name he did not know, and that he was forced to do some of them by this man. He said the other person forced Minnick to rape Martha and attempt to electrocute her with a stripped electrical cord.

Up to this point the police had not yet learned that discolored marks on her ankles were caused by electrical shocks.

They had thought that they were grease from the hands of the murderer and therefore had focused their investigation on mechanics.

According to Minnick's statement, the unnamed individual directed Minnick to get a knife from the kitchen. Minnick said he threw the knife as hard as he could at

Martha. The knife stuck in her back, he continued, and the unnamed individual came over as Minnick leaned over Martha, and put his hand on Minnick's and pushed the knife in. Then Minnick began to talk about taking a large jar of coins, another matter involved in the case which the police to this point were unaware of. The officers turned the tape recorder back on to record the story, and went through it for the second time in a question-and-answer form. The only notable difference between the two accounts was that Minnick called the other man "Jim". Minnick said that Jim forced him to do the things he did, and that Jim drove the knife home, and then threatened Minnick if he told.

Prior to trial Respondent filed a Motion to Supress. In his Motion to Suppress Respondent sought to exclude the recorded statement and the officers' testimony as to what Minnick said, on the grounds that the statement was taken in violation of his rights as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. The trial court held a hearing on this motion and denied the motion to suppress, and, at trial when the State offered this evidence the Respondent duly objected to its admission.

Following conviction the defendant raised the issue of admission of the statement in his Motion to Correct Errors and, on denial of that motion, on direct appeal to the Indiana Supreme Court.

In its opinion of September 7, 1984, the Indiana Supreme Court reversed Respondent's conviction. In its opinion the Indiana Supreme Court held that the two officers "initiated" interrogation of the Respondent, outside the presence of counsel, after Respondent had requested counsel.

In its Petition for rehearing, the State of Indiana argued that Respondent's statement about an attorney, made after the morning interrogation, was not a clear request or advisement to the police that he desired to deal with the

police only in the presence of counsel. In addition, the State argued, it was not improper for the police to ask defendant, in a non-coercive manner, if he wanted to talk to the officers. Further, the State argued, the statement made by Respondent itself evidences Minnick's intention to make a statement to mislead the police.

The Indiana Supreme Court denied the State's Petition for Rehearing.

SUMMARY OF REASONS FOR ALLOWANCE OF THE WRIT

The Indiana Supreme Court incorrectly decided an important federal question which has not been settled by the Court. The Indiana Supreme Court incorrectly held that it must apply *Edwards v. Arizona* as a "per se" rule, and did not consider evidence that the interrogation session began in a manner which showed that the defendant voluntarily, intelligently, and knowingly waived his right against self-incrimination and representation by counsel. The Court also incorrectly held that the initial discussion of counsel was a clear request to the police to deal with him only through counsel.

REASONS FOR ALLOWANCE OF THE WRIT

The Constitution of the United States guarantees a criminal defendant the right against self-incrimination and the right to counsel. *United States Constitution*, Amendments Articles V, VI, and XIV. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.E.2d 9694 (1966), of course, established an exclusionary rule as to statements of an accused which have been received in custodial interrogation without a prior warning to the accused, including his right to remain silent and also the right to the presence of an attorney. Even with such a warning, when the accused requests counsel, "the interrogation must cease". *Id.* at 474, 86 S.Ct. at 1627.

Edwards v. Arizona, 451 U.S. 447, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981) discussed further the consequences of such a request for counsel. In *Edwards* the defendant had clearly asked for counsel and the police nevertheless the next day informed Edwards that he "had to" talk to the detectives, even though Edwards had just repeated his refusal to talk without a lawyer.

The inquiry involved here involves two distinct issues: The clarity of the invocation of right to presence of counsel during interrogation, and whether that right, having been invoked, was later validly waived.

The most recent case on the subject of interrogation after requests for counsel to be decided by this Court is *Smith v. Illinois*, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___ (No. 84-5332, Dec. 10, 1984).

The *Smith* case focused entirely upon the request for counsel ("invocation"), and not on the issue of "initiation" of subsequent discussions. Put in its simplest terms, the holding in *Smith* disapproves attempts to read into the request for counsel any lack of clarity or equivocation based on later occurrences or statements:

> "On occasion, an accused's asserted request for counsel may be ambiguous or equivocal. ... [C]ourts have developed conflicting standards for determining the consequences of such ambiguities. ... The courts below were able to construe Smith's request for counsel as 'ambiguous' only by looking to Smith's subsequent responses to continued police questioning and by concluding that, 'considered in total', Smith's 'statements' were equivocal. ... This line of analysis is unprecedented and untenable. As Justice Simon emphasized below, '(a) statement either is such an assertion (of the right to counsel) or it is not. ... Where nothing about the request for counsel or the circumstances leading up to the request would render it ambiguous, all questioning must cease.' In these circumstances, an accused's subsequent statements

are relevant only to the question whether the accused waived the right he had invoked."

Smith v. Illinois, supra.

We believe that a reading of the conversation quoted at length above shows that the discussion of counsel is not a clear or unambiguous invocation of the right to deal with the police investigation only through counsel. Interrogation had clearly ceased. The police were merely telling defendant and his parents what steps would occur next. The record shows that after the first mention of wanting a lawyer, the parents responded that they would try to get "Mr. Felling." This and all subsequent discussions of getting an attorney were clearly inter-family discussions of Minnick's view that they should get a lawyer for future assistance in the case, rather than a notice to the police that they may not continue questioning him without a lawyer present.

The common-sense reason for emphasis on the clarity or unambiguity of an invocation of the right to deal with the police only through counsel is that when the request is ambiguous the police cannot fairly be said to be on notice that they should avoid further interrogations. In this case the discussion of getting an attorney occurred in a complicated, multi-sided conversation in a context which strongly suggested that Minnick and his parents were simply discussing their eventually hiring a particular lawyer.

The Indiana Supreme Court in its opinion did not consider the clarity or ambiguity of the request. It was incorrect to omit this consideration from its inquiry. We submit that reflection on the record of the discussion quoted above shows no more than an ambiguous discussion of eventual need for counsel.

The next step in the inquiry is the validity of the purported waiver of the right, assuming it was validly invoked. It is often said that *Edwards* narrowed the focus of

inquiry to the simple question of who "initiated" subsequent police-suspect conversations. But the *Edwards* decision dealt with a very clear and immediate violation of the right invoked and did not need to get into more subtle determinations. Justice Powell, in a concurring opinion to *Edwards*, took pains to point out that the case did not actually restrict the inquiry to such a narrow issue:

> "But few cases will be as clear as this. It is useful to contrast the circumstances of this case with typical, and permissible, custodial communications between police and a suspect who has asked for counsel. For example, police do not impermissibly 'initiate' renewed interrogation by engaging in routine conversations with suspects about unrelated matters. And police legitimately may inquire whether a suspect has changed his mind about speaking to them without an attorney. . . . It is not unusual for a person in custody who previously has expressed an unwillingness to talk or a desire to have a lawyer, to change his mind and even welcome an opportunity to talk. Nothing in the Constitution erects obstacles that preclude police from ascertaining whether a suspect has reconsidered his original decision."

451 U.S. at 490, 101 S.Ct. at 188, concurring opinion.

Justice Powell went on to warn against the possible elevation of a single element of fact, namely, who "initiated" a particular conversation, to a decisive issue, to the derogation of the well-established general law on waiver as found in *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed.2d 1461 (1938).

In *Wyrick v. Fields*, ___ U.S. ___, 103 S.Ct. 394, ___ L.Ed.2d ___ (1982), this Court reversed a Court of Appeals decision that called the *Edwards* standard a "per se rule". It held that in so doing the Court of Appeals had "misconstrued" *Edwards* and "imposed a new and unjustified limit on police questioning of a suspect who voluntarily, knowingly, and intelligently waives his right

to have counsel present." 103 S.Ct. at 394. The rule that the Court of Appeals had fashioned to exclude the post-polygraph report "...certainly finds no support in *Edwards*, which emphasizes that the *totality of the circumstances*, including the fact that the suspect initiated the questioning, is controlling." 103 S.Ct. at 397, emphasis added. This Court, accordingly, issued a summary reversal of the Court of Appeals.

Subsequently, this Court considered *Oregon v. Bradshaw*, ___ U.S. ___, 103 S.Ct. 2830, ___ L.Ed.2d 2830 (1983). There, the court found that, contrary to a lower court holding, a question asked by defendant did amount to *Edwards*-type "initiation" of a discussion, and went or to the issue of whether in the totality of circumstances a valid waiver occurred. But Justice Powell, in another concurring opinion, *Id.* at 2836 and ff., noted that the case unfortunately passed up another opportunity to clarify whether the *Edwards* standard was or was not a "per se" rule. He again urged that it not be considered such a "per se" rule. He warned that the main and dissenting opinions in *Bradshaw* could seem to treat the question of "initiation" as "the first step of a two-step analysis", the second step being the application of the *Zerbst* standard to examine the "totality of the circumstances." *Id.* Justice Powell then observed that:

> "This bifurcating of the *Zerbst* standard is not compelled by *Edwards* or any of our other cases. The inquiry in *Edwards* did focus on the reopening of communication with the accused by the police—a reopening that properly was held to be coercive. As there were no other significant facts or circumstances bearing upon the waiver question, there was no occasion for the Court to consider whether a two-step analysis is required in the more customary case. An incarcerated person, accused of crime, does not remain silent and speak only when conversation is initiated by others, whether by fellow prisoners, guards, or law enforcement officers. Jail or prison confinements

> prior to indictment or trial may extend over days and weeks, and numerous conversations customary occur, often accompanied by collateral facts and circumstances. Rarely can a Court properly focus on a particular conversation, and intelligently base a judgment on the simplistic inquiry as to who spoke first."

103 S.Ct. at 287. Justice Powell added in a footnote that "[p]erhaps what has caused some confusion is a failure to recognize that the only new element in *Edwards* was the emphasis on the prosecution's burden of proof in cases where—in the absence of relevant subsequent facts—the critical question of waiver focuses on whether the initial communication by the police was proper." *Id.*, n. 2.

Justice Powell then went on to uge the Court not to accept a two-part inquiry or "per se" rule based on *Edwards*:

> "The *Zerbst* standard is one that is widely understood and followed. It also comports with common sense. Fragmenting the standard into a novel two-step analysis—if followed literally—often would frustrate justice as well as common sense. Courts should engage in more substantive inquiries than 'who said what first'. The holding in *Edwards* cannot in my view fairly be reduced to this."

In a footnote, he added: "I therefore prefer to read Justice RHENQUIST'S opinion merely as an analytical framework that—except in a case like *Edwards*—would not inhibit a full examination of all relevant facts and circumstances," 103 S.Ct. at 2837-2839, including n. 4.

The State can suggest a sound reason to support Justice Powell's previously-expressed warnings against "per se" treatment of the *Edwards* rule. The rules regarding the uses of confessions are in effect "exclusionary rules" designed to keep out of evidence germain facts concerning a defendant's own implication of himself in a crime. In *United States v. Leon*,___ U.S. ___, 104 S.Ct. 3405, ___ L.Ed.2d ___ (1984) the Court noted that Fourth

Amendment-based exclusionary rules have long been a source of concern, and, when applied unbendingly "impede unacceptably" the truth-finding functions of a trial court. "Particularly when law enforcement officers have acted in objective good faith or their transgressions have been minor", the opinion says, "the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system" and may "generate disrespect" for the law. *Leon*, 104 S.Ct. 3405 at 3410. In Fourth Amendment cases, as *Leon* points out, this Court has declined to adopt any "per se" or "but for" rule in determining the admissibility of evidence seized. If an exclusionary rule were to have any deterrent effect, the *Leon* opinion continued, it must alter the behavior of policemen or policies of their departments. *Id.* at 3419.

We submit that the opinion of the Indiana Supreme Court applied *Edwards, supra*, in a "per se" manner analogous to the manner the rule was miscontrued by the U.S. Court of Appeals in *Wyrick, supra*.

An initial interrogation lasting from about 5:00 a.m. to 7:00 or 7:30 a.m. ended in anger, and a discussion began with defendant in the presence of his parents (although he was at the time already an adult) about the next steps in the case, during which time defendant mentioned the need to get a lawyer. The lower court was justified in considering that the remark was not a demand to the police to cease dealing with defendant except through counsel; finding that Minnick did no more than tell his parents to start looking for a lawyer for him immediately.

This all occurred in a discussion quoted at length by the Indiana Supreme Court in its opinion. The transcript shows that no interrogation was occurring at the time. The quotation supports a conclusion that Defendant's request for an attorney was addressed to his parents, rather than being intended to signify to the police any desire to deal with them only through counsel, or any assertion of the right not to be interrogated. (The Indiana Court confused

the time this happened; it was about 7:30 rather than 11:00. By 11:00, Defendant had been returned from the body sample tests.)

Minnick executed another rights waiver around 11:00 in connection with the metal trace test. This rights advisement and waiver shows that Defendant was informed of his rights and understood his right to remain silent and his right to an attorney before the afternoon interrogation statement which produced the disputed statement.

We reach the afternoon session in which the statements were given. Defendant was asked if he wanted to talk to the officers. There is nothing in the context of these question to show any coercive element in it. The two officers involved are shown by the record not to have known of the morning discussion concerning getting an attorney. Thus, they were acting in "objective good faith" similar to that discussed in *Leon*. Defendant was again informed of all his rights and asked if he had a lawyer or wanted a lawyer present. He said he did not. When defendant made his statement, he initially tried to deny involvement, then tried to shift blame to a third party. This suggests that defendant purposefully agreed to the interrogation in order to try to mislead the police. Thus, the conclusion that the statement was knowingly, voluntarily, and intelligently waived is further strengthened.

The opinions of this court cited above show that there still remains an important question about the meaning and extent of the *Edwards v. Arizona* rule. This Court needs to consider and state whether the rule is to be applied in a broad "per se" manner, or whether the issue of who initiated a prisoner-police contact is simply one aspect of consideration of the voluntariness of defendant's waiver of rights.

Petitioner submits that, guaged by any such standard, Respondent's rights were observed and that the statement

occured after a valid waiver of rights by Respondent. *Wyrick v. Fields*, 459 U.S. 42 (1982)

CONCLUSION

For the foregoing reasons, the Petitioner, State of Indiana, respectfully urges that the Petition for Writ of Certiorari be granted.

LINLEY E. PEARSON
Attorney General of Indiana

WILLIAM E. DAILY
Deputy Attorney General

JOSEPH N. STEVENSON
Deputy Attorney General

Attorneys for Petitioner

APPENDIX

William A. MINNICK, Appellant,

v.

STATE of Indiana, Appellee.

No. 1282S467.

Supreme Court of Indiana.

Sept. 7, 1984.

Defendant was convicted in the Clay Circuit Court, Ernest Yelton, J., of murder, and he appealed. The Supreme Court, Givan, C.J., held that statement made by defendant during second interrogation which police had initiated after initial questioning during which defendant had requested an attorney was inadmissible in prosecution for murder.

Remanded for new trial.

Criminal Law 412.2(4)

Statement made by defendant during second interrogation which police had initiated after initial questioning during which defendant had requested an attorney was inadmissible in prosecution for murder.

Woodrow S. Nasser, Terre Haute, for appellant.

Linley E. Pearson, Atty. Gen., Joseph N. Stevenson, Deputy Atty. Gen., Indianapolis, for appellee.

GIVAN, Chief Justice.

Appellant was convicted of Murder by a jury. The jury found appellant had committed the aggravated acts of robbery and rape in conjunction with the murder. The court sentenced appellant to death.

The facts are: Martha Payne was killed during the late afternoon of October 26, 1981. Based on their investigation, the police went to the home of appellant at 4:45 A.M. on the

twenty-seventh. The police asked appellant to accompany them to the station to answer questions. Appellant voluntarily complied. Appellant was provided the standard *Miranda* warnings and signed a waiver of those rights. Appellant orally indicated he did not wish the assistance of counsel. He indicated to the police he had been to the victim's home that day, but he did not admit any role in the murder. At approximately 11:00 A.M., on the twenty-seventh, the following discussion was conducted between appellant, his stepfather and mother Mr. and Mrs. Rogers, State Police Officer Hanlon, Greencastle Police Officer Cline and the Putnam County Prosecutor Delbert Brewer.

MR. HANLON: We're going to get a, a warrant, (inaudible)

MR. MINNICK: A warrant for what?

MR. HANLON: Take some hair from, samples of hair, pieces of hair. Girl was, had a lot of hair under her fingernails.

* * * * * *

MR. HANLON: So we're going to get a warrant, to take some samples of your hair. Okay?

MR. MINNICK: Take some, some of mine?

MR. HANLON: Yeah?

MR. MINNICK: Why?

MR. HANLON: Because she had samples of hair on her. And we want to match them. See if we can match them with what's on her.

MR. MINNICK: What's that for?

MR. HANLON: To see if you were, had a hold of her or she had hold of you.

MR. MINNICK: Then I killed her?

MR. HANLON: I don't know that.

SLIGHT INTERRUPTION IN TAPE

MR. CLINE: —just a routine and everything.

MR. ROGERS: Is he under arrest?

MR. MINNICK: Am I under arrest?

MR. HANLON: We're going to hold you for a little while.

MR. MINNICK: Well, I (sic) rather go home.

MRS. ROGERS: Does he need a lawyer?

MR. HANLON: That's up to you.

MR. MINNICK: I'd rather go home. If you're gonna fingerprint me, fingerprint me. I'd rather go home.

MR. BREWER: You're not leaving. Not yet. Also on, on this, what he's talking about on the warrant, you'll be detained because there may have been rape. We're going to take specimens of various parts, as soon as we have the Judge sign it. Which, if the girl was raped and it matches with you, the semen, etcetera (sic), it will also tell us that.

MR. MINNICK: Huh uh. No. —And then can I, am I allowed to go home?

MR. HANLON: Not right now. (inaudible)

MR. MINNICK: Am I under arrest though? Am I under arrest?

MR. BREWER: You're being held for investigation right now.

MR. MINNICK: Am I, am I allowed to go home though?

MR. HANLON: No, no.

MR. MINNICK: Can I get my lawyer then?

MR. CLINE: You're under custodial arrest at this time.

MR. HANLON SPEAKING SIMULTANEOUSLY WITH MR. CLINE.

MR. HANLON: You have a right to (inaudible)

MR. MINNICK: I'm gonna go home then.

MR. HANLON: Wait a minute. (inaudible)

MR. BREWER: We doing the same thing on some other suspects?

MR. CLINE: That's what I'm saying, you have others too.

MR. HANLON: Yeah.

MR. BREWER: But that will tell us scientifically, you know.

* * * * * *

MR. ROGERS: Well Jack, do we have to have an attorney or what do you think?

MR. HANLON: Well, that's entirely up to you.

MR. MINNICK: I'd rather have attorney.

MR. BREWER: Huh?

MR. MINNICK: I'd rather have attorney.

MR. BREWER: That won't stop the search warrant.

MR. HANLON: That, that won't stop it.

MR. ROGERS: Well no, but—

MRS. ROGERS: Would it be better then, to just wait what you'ns find and then get an attorney?

MR. BREWER: I can't advise you of that? You have the right to.

MR. HANLON: That's up to you.

This discussion clearly demonstrates two important facts; appellant was in custody and while in custody appellant asserted a request for the assistance of counsel. At that time the police and the prosecutor correctly stopped the interrogation. A search warrant was obtained and the body samples were taken. Appellant was then transported to the Putnam County jail. At 3:00 P.M. on the twenty-seventh, Putnam County Deputy Sheriff Hendrich went to

appellant's cell and twice asked appellant if he would like to answer questions. Appellant assented and was taken to be questioned by Hendrich and State Police Officer Smith. The record demonstrates appellant did not request this interrogation, nor did he take any action to initiate the questioning. Appellant gave the police a self-incriminating statement which was introduced into evidence as State's exhibit 63 over the objection of appellant. This was reversible error.

This Court has said:

> "When the right of counsel is asserted during questioning, that process must cease, and a confession procured by interrogators thereafter is per se inadmissible in the absence of a new waiver of counsel evidenced by proof that the suspect initiated the resumption of questioning. *Edwards v. Arizona*, (1981) 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378; *Wall v. State*, (1982) Ind., 441 N.E.2d 682, 683." *Clark v. State*, (1984) Ind., 465 N.E.2d 1090 (Givan, C.J. and Pivarnik, J., dissenting).

The United States Supreme Court in *Edwards* dealt with a situation analogous to the case at bar. After initial questioning, the defendant in *Edwards* requested an attorney. The police then ceased the questioning. However, the police later, after providing a new set of warnings, began to interrogate the defendant. He then produced a confession which was introduced as evidence. In *Edwards* the court held:

> "[T]hat when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. We further hold that an accused, such as Edwards, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been

made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." *Edwards, supra*, 451 U.S. at 484, 101 S.Ct. at 1884, 68 L.Ed.2d at 386.

This cause is remanded to the trial court for a new trial.

All Justices concur.

APPENDIX B

STATE OF INDIANA

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS
MARJORIE H. O'LAUGHLIN, CLERK
217 STATE HOUSE

INDIANAPOLIS, 46204

TELEPHONE 232-1930

No. 1282S467

William A.Minnick V. State of Indiana

You are hereby notified that the Supreme Court has on this day Appellee petition for Rehearing is hereby DENIED without ~~SIXIXIXIXX~~ Opinion. Givan,C.J. All Justices Concur.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 30 day of Nov, 1984

RECEIVED
NOV 30 1984
ATTORNEY GENERAL
OF INDIANA

Marjorie H. O'Laughlin
Clerk Supreme Court and Court of Appeals

BEST AVAILABLE COPY